

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1842 of 1995
with
Civil Application No.2685 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

KAUSHIKBHAI MUKESHBHAI SHAH

Appearance:

MR BP TANNA for appellant
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 02/08/2000

ORAL JUDGEMENT

1. Appellant-Ahmedabad Municipal Corporation has filed this appeal under Section 411 of the Bombay Provincial Municipal Corporations Act, 1949 ('Act' for short) challenging judgment and order dated August 16, 1993 passed by learned Judge, Small Causes Court, Ahmedabad, in Municipal Valuation No.4516 of 1990, by which judgment and order, the learned Judge quashed and set aside the gross rateable value fixed by the Ahmedabad Municipal Corporation for the Assessment Year 1989-90, as also the special notice issued to the respondents.

2. Heard learned advocates for the parties.

3. Learned Senior Advocate, Mr. B.P. Tanna appearing for the appellant, has vehemently submitted that by quashing GRV fixed by the appellant, the learned Judge had made assessment at 'zero'. It is submitted by learned Senior Advocate that even if it was held that assessment was not in accordance with law, it was the duty of the learned Judge to examine the evidence and determine correct rateable value. In support of the submission, learned Senior Advocate placed reliance on the decision of the Division Bench of this Court (Coram: B.N.Kirpal, C.J. (as His Lordship then was) and R.K. Abichandani, J.) in the case of Municipal Corporation of Ahmedabad vs. Oriental Fire & General Insurance Company Limited, reported in 1994 (2) GLR 1498. Learned Senior Advocate further submitted that, by quashing assessment, the learned Judge has lost sight of the fact that entire tax would be lost to the Corporation for the said Assessment Year. Learned Senior Advocate for the appellant submitted that the question involved in this appeal is squarely covered by the decision of the Division Bench of this Court in the case of Oriental Fire & General Insurance Company Limited (supra) and, therefore, this appeal deserves to be allowed.

3. In our opinion, the decision, to which our attention is invited by learned Senior Advocate for the appellant, squarely covers the point involved in this appeal. Before the Division Bench, in the case of Oriental Fire & General Insurance Company Limited (supra), an argument was advanced that, if the assessment is a nullity, because of non-compliance with the provisions of Rule 15(2) or otherwise, then the Small Causes Court has no option but to quash the assessment, in toto. The Division Bench, in paragraph 67, after referring to earlier judgment of the Division Bench of this Court in the case of Anant Mills Co. Ltd. vs.

Municipal Corporation, Ahmedabad, 1993 (2) GLH 897, held in paragraph 67, page 1544, as under:

"It would mean that even if the assessment is held to be not in accordance with law, whether because of the wrong method followed with regard to determining the rateable value or because of any irregularity or illegality in procedure or because of violation of the principles of natural justice or because notice under Rule 15(2) had not been issued, then the Small Causes Court would itself have the jurisdiction to examine evidence and determine the correct rateable value. It would be wholly inappropriate for the Small Causes Court to merely quash the assessment, which would have the effect that for the official years in question, the entire tax would be lost to the Corporation. In effect, the ratio decidendi of the decision in Anant Mills case is that the Small Causes Court exercises the same power and will have the same jurisdiction, which is exercised by the Commissioner for the purposes of determining what should be the correct rateable value."

4. In view of the above observations of the Division Bench, we are of the view that this appeal deserves to be allowed. The judgment and order dated December 31, 1992, passed by learned Judge, Small Causes Court, Ahmedabad, in Municipal Valuation Appeal No.4516 of 1990, is quashed and set aside. Municipal Valuation Appeal No.4516 of 1990 is remanded to the Small Causes Court to be decided afresh in accordance with law and keeping in mind the principles laid down by the Division Bench of this Court in the case of Municipal Corporation of Ahmedabad vs. Oriental Fire & General Insurance Company Limited, reported in 1994 (2) GLR 1498. These being old matter challenging the GRV of A.Y. 1989-90, it would be desirable that the Small Causes Court disposes of appeal as early as possible, preferably within a period of six months. There shall be no order as to costs.

5. In view of the order passed in the First Appeal, Civil Application would not survive and is disposed of accordingly.

(M.H.Kadri, J.)

(D.P. Buch, J.)

(swamy)